IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 12.03.2007

CORAM

THE HON'BLE MR.JUSTICE P.D.DINAKARAN
AND
THE HON'BLE MRS.JUSTICE CHITRA VENKATARAMAN

W.P.No.39304 of 2003

S.Alagarswamy .. Petitioner

Vs

1. The Income Tax Officer
   Ward-I (4)
   Virudhunagar.

2. The Commissioner of Income Tax
   (Appeals), Madurai. .. Respondents

Petition under Article 226 of the Constitution of India for issue of writ of Certiorarified Mandamus to call for the records relating to the order passed by the second respondent in Appeal Nos.390, 391 and 392 of 2000-01, dated 28.8.2001, to quash the same and to direct the second respondent to hear the appeal on merits.

For Petitioner : Mr.M.Md.Ibrahim Ali

For Respondents : Mrs.Pushya Sitaraman
Sr.Standing Counsel (IT)

O R D E R

(Order of this Court was made by P.D.DINAKARAN, J.)

The petitioner seeks to quash the order dated 28.8.2001 made in Appeal Nos.390, 391 and 392 of 2000-01 dismissing the appeals preferred against the assessment order dated 31.3.2000 made by the first respondent for the assessment years 1993-94, 1994-95 and 1995-96 for non payment of tax due as per the returns of income filed by the petitioner as contemplated under Section 249(4)(a) of the Income Tax Act (for brevity, "the Act").

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2. In this regard, it is apt to refer Section 249(4)(a) of the Act, which reads as under:

"Form of appeal and limitation.
249. (1) to (3) .....

(4) No appeal under this Chapter shall be admitted unless at the time of filing of the appeal,—

(*a*) where a return has been filed by the assessee, the assessee has paid the tax due on the income returned by him; or

(b) where no return has been filed by the assessee, the assessee has paid an amount equal to the amount of advance tax which was payable by him:

Provided that, in a case falling under clause (*b*) and on an application made by the appellant in this behalf, the Commissioner (Appeals) may, for any good and sufficient reason to be recorded in writing, exempt him from the operation of the provisions of that clause."

3. A reading of the Section 249(4)(a) of the Act makes it clear that payment of tax due on the income returned by the assessee before filing an appeal against the assessment order is a condition precedent and non-compliance of the same renders the appeal not maintainable. We, therefore, do not see any illegality or irregularity, or any arbitrary exercise of power or violation of the principles of natural justice in the order impugned in this writ petition. Our above view is also supported with the decision of this Court in *CIT v. Smt.G.A.SAMANTHAKAMANI, [2003] 259 ITR 215.*

4. That apart, the writ petition also suffers from laches as the petitioner had chosen to challenge the order dated 28.8.2001, which was received on 5.9.2001 only during December, 2003.

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5. For the reasons aforesaid, the writ petition is dismissed, of course, making it clear that if the petitioner seeks any exemption under proviso to Section 249(4)(b), he is at liberty to take an application for such exemption before the authority concerned. No costs.

sasi

Sd/-
Asst. Registrar.

/true copy/

Sub Asst. Registrar.

To

1. The Income Tax Officer
   Ward-I (4)
   Virudhunagar.

2. The Commissioner of Income Tax
   (Appeals), Madurai.

+1 C.C. to M/S.M.MD.IBRAHIM ALI, SR.No.15264

+1 C.C. to M/S.PUSHYA SITARAMAN, SR.No.15300

GK (CO)
TES (24/03/2007)

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